

REMARKS

Reconsideration of this application as amended is respectfully requested. Claims 1, 12 and 26 have been amended, and claims 3, 6, 7, 9, 14, 17 and 18 were previously cancelled. Accordingly, claims 1-2, 4-5, 8, 10-13, 15-16 and 19-34 remain in this application and are again presented for the Examiner's consideration in view of the following comments.

In the Official Action, claims 1, 2, 4, 8, 10-13, 15, 19-23, 25 and 29-32 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,655,000 to Swick et al ("*Swick*"). Additionally, claims 5, 16 and 24 were rejected under 35 U.S.C. § 103(a) as being obvious over *Swick*. Applicant respectfully traverses these rejections.

*Swick* is directed to a retainer for fastening a branch to a horizontal support wire. The retainer includes two C-shaped clip portions which are disposed at either end of an elongated, flexible connecting member.

Applicant initially notes that *Swick* fails to teach the following requirement in claim 1:

"a connecting member having a first end connected to the first element opposite the first opening and having a second end connected to the second element opposite the second opening".

Referring to Fig. 5 of *Swick*, it is clear that end 15 of connecting member 12 is connected to clip portion 14 adjacent the opening 27 in the clip portion, and that end 17 of connecting member 12 is connected to clip portion 16 adjacent the opening 27 in the clip portion. Thus, in neither case is the connecting member connected to the clip portion opposite the opening therein as required by claim 1. Hence, claim 1 is distinguishable over *Swick* for at least this reason.

*Swick* also fails to teach the following requirement in claim 1:

"the connecting member being resiliently foldable between a relaxed configuration in which the first element and the second element are substantially coplanar and the first opening faces away from the second opening".

In that regard, applicant notes that the ends of the connecting member of *Swick* are joined to the clip portions adjacent the openings therein so that the openings face one another when the retainer is in a relaxed configuration. (see Fig. 3 of *Swick*) With the openings facing one another, the connecting member could interfere with the items to which the clip portions are secured. In contrast, claim 1 requires the first opening to face away from the second opening. In such arrangement, the first and second elements will be free to secure to items of almost any size and shape without interference from the connecting member.

In view of the foregoing, applicant submits that claim 1 patentably distinguishes over *Swick* such as to warrant its immediate allowance, which action is respectfully requested. Claims 2, 4-5, 8, 10-11 and 29-30 depend either directly or indirectly from claim 1 and include all of the limitations thereof. For at least this reason, applicant submits that claims 2, 4-5, 8, 10-11 and 29-30 also patentably distinguish over *Swick* such as warrant their allowance.

With respect to claim 12, applicant notes the requirement for:

"a connecting member interconnecting the first element and the second element, the connecting member lying along the central axis".

*Swick* plainly fails to meet this limitation of claim 12. More particularly, *Swick* teaches a device in which first and second clip portions 14 and 16 each has a pair of arms disposed on opposite sides of a central axis A. (see Fig. 2 and col. 2, lns. 49-50 of *Swick*) However, the flexible filament 12 interconnecting clip portions 14 and 16 lies entirely to one side of central axis A-A. Indeed, if filament 12 were to lie along central axis A-A of *Swick*, the filament would be aligned with openings 27 in clip portions 14 and 16 and would therefore interfere with any attempt to connect these clip portions to an elongated structure such as support wire 26. As noted above, even with filament 12 to one side of central axis A-A, it can still interfere with the securing of first and second items to the clip members.

For the foregoing reasons, applicant submits that claim 12 patentably distinguishes over *Swick*, and is in condition for immediate allowance. Claims 13, 15-16, 19-25 and 31-32 depend either directly or indirectly from claim 12 and include all of the limitations of that claim. For at least this reason, applicant submits that claims 13, 15-16, 19-25 and 31-32 also distinguish over *Swick* such as to warrant their immediate allowance, which action is respectfully requested.

Claims 26-28, 33 and 34 were rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 6,138,688 to Lombardi, Jr. ("*Lombardi*") in view of *Swick*. Applicant respectfully traverses this rejection in view of the above arguments and for the reasons set forth below.

*Lombardi* is directed to a unitary cosmetic assembly including a frame 10, and a plurality of resilient flat arms 12, 13 and 14 projecting from the rear of the frame (col. 2, lns. 55-56). As noted by the Examiner, *Lombardi* fails to teach the following limitation of claim 26:

"the connecting member being resiliently foldable between a relaxed configuration in which the first element and the second element are substantially coplanar..., and a folded configuration in which the first element is coaxially aligned with the second element".

In order to overcome this deficiency of *Lombardi*, the Examiner has attempted to combine the reference with *Swick*. However, for the reasons discussed below, applicant submits that the combination of *Swick* and *Lombardi* is improper, and even if such combination were possible, it would still fail to meet several other limitations of claim 26.

Initially, applicant notes that the first and second elements of *Lombardi* are not spaced from one another and frame 10 is not flexible. For that reason, the first and second elements cannot be displaced relative to one another. In contrast, *Swick* discloses a device in which the first and second elements are spaced apart from one another by a flexible connecting element such that the first and second elements can be displaced relative to one another.

Furthermore, the first and second elements of *Lombardi* share a common arm 13. Hence, regardless of how resilient frame 10 may be, it would simply be impossible for the frame to be placed in a folded configuration in which the first element is coaxially aligned with the second element. In addition, the frame of *Lombardi* is designed so as to accommodate a mirror on the side opposite the first and second elements. *Swick* merely uses a thin member for connecting the first and second elements, and includes no structure whatsoever for supporting a mirror. Thus, the devices of *Lombardi* and *Swick* are so manifestly different from one another that their combination may potentially result in some device, but certainly not that of the presently claimed invention.

Moreover, even if the teachings of *Lombardi* and *Swick* could be combined, such combination would still not teach or suggest all of the limitations of claim 26. In that regard, applicant notes the following requirement in claim 26:

"the connecting member being resiliently foldable between a relaxed configuration in which the first element and the second element are substantially coplanar and the first opening faces away from the second opening".

In *Lombardi*, the openings in the first and second elements face in the same direction. As noted above, the openings in the clip portions of *Swick* face one another when the device therein is in a relaxed configuration. Accordingly, neither *Lombardi* nor *Swick* teaches a device in which the first opening in the first element faces away from the second opening in the second element when the connecting member is in a relaxed configuration.

In view of the foregoing, applicant submits that claim 26 patentably distinguishes over both *Lombardi* and *Swick*, and any combination which the Examiner believes can be made therefrom. Claims 27, 28, 33 and 34 depend either directly or indirectly from claim 26 and therefore include all of the limitations of that claim. For at least this reason, applicant submits that claims 27, 28, 33 and 34 also distinguish over *Lombardi* and *Swick*, and their attempted combination. Accordingly, allowance of claims 26-28, 33 and 34 is respectfully requested.

Finally, applicant notes that an Information Disclosure Statement was submitted in connection with this application by Express Mail on October 22, 2003 along with the application itself. Applicant has not yet received the Examiner's confirmation that she has considered the references submitted with that Information Disclosure Statement, and


requests that the Examiner kindly confirm her consideration of such references by initialing the Form PTO/SB/08A/B submitted therewith.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited. If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that she telephone applicant's attorney at (908) 654-5000 in order to overcome any additional objections which she might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

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